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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/606,599 | 06/26/2003 | John Simpson | 12727-00032 | 5060 |
| 7590 | 08/25/2004 | | EXAMINER | |
| John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102 | | | JENKINS, JERMAINE L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2855 | |
| | | | DATE MAILED: 08/25/2004 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/606,599 | SIMPSON, JOHN | |
| | Examiner | Art Unit | |
| | Jermaine Jenkins | 2855 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 06262003.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geschwender et al (5,038,606).

In regards to claims 1, 4-6, 8, 11-13, 15 & 19, Geschwender et al teaches a rain gauge having a first hollow cylinder (14) having a side wall and a bottom wall closing a first end of the first cylinder (14), the first cylinder (14) open at a second end and having an outside diameter, a second hollow cylinder (32) having a side wall and a bottom wall closing a first end of the second cylinder (32), the second cylinder (32) having a length that is less than a length of the first cylinder (14) (See Figure 1), the first and second cylinders (14, 32)molded from a resilient translucent plastisol material (Column 4, lines 39-41 & lines 55-58); and a means for attaching the second cylinder (32) to a surface (being read as a lower diameter cylinder 36) (Column 6, lines 33-42). However, Geschwender et al does not teach said second cylinder open at a second end and having an inside diameter approximately equal to said outside diameter of said first cylinder so that said first cylinder is receivable in said second cylinder.

Geschwender et al teaches the second cylinder (32) open at a second end and having an outside diameter approximately equal to the inside diameter of the first cylinder (14) so that the second cylinder (32) is receivable in the first cylinder (14) (Column 2, lines 6-9; See Figure 1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the second cylinder open at a second end and having an inside diameter approximately equal to the outside diameter of the first cylinder so that the first cylinder is receivable in the second cylinder, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Whether to have either of the cylinders being receivable on the inside or outside diameter, the ability to combine the two cylinders for the measurement of rain would still be performed.

With respect to claims 2, 9, 16, 20 & 21 Geschwender et al teaches wherein the first cylinder (14) comprises indicia (20) located on the sidewall for measuring collected contents of the first cylinder (14) (Column 4, lines 22-29; See Figure 1).

With respect to claims 3, 10 & 17 Geschwender et al teaches the means for attaching the second cylinder (32) to a surface comprises at least one of a fastener (36, being read as a lower diameter cylinder) and a stake (38, being read as a final terminating cylinder).

With respect to claims 7, 14, 18 & 22, Geschwender et al teaches wherein the plastisol material comprises at least one of a pigment and a dye (Column 5, lines 42-49).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermaine Jenkins whose telephone number is 571-272-2179. The examiner can normally be reached on Monday-Friday 8am-430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jermaine Jenkins
A.U. 2855



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